

HOUSE BILL REPORT

HB 2110

As Reported by House Committee On:
State Government Operations & Accountability

Title: An act relating to access to accident reports and information compiled by the Washington state patrol.

Brief Description: Clarifying access to accident reports and information compiled by the Washington state patrol.

Sponsors: Representatives Williams, Wood, Clibborn, Rodne and Simpson.

Brief History:

Committee Activity:

State Government Operations & Accountability: 2/28/05, 3/2/05 [DPS].

<p>Brief Summary of Substitute Bill</p> <ul style="list-style-type: none">• Requires accident reports to be made available to the public.
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HOUSE COMMITTEE ON STATE GOVERNMENT OPERATIONS & ACCOUNTABILITY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Haigh, Chair; Green, Vice Chair; Nixon, Ranking Minority Member; Clements, Assistant Ranking Minority Member; Hunt, McDermott, Miloscia, Schindler and Sump.

Staff: Jim Morishima (786-7191).

Background:

Public Records Disclosure

The Public Disclosure Act (PDA) requires all state and local government agencies to make all public records available for public inspection and copying unless they fall within certain statutory exemptions. The provisions requiring public records disclosure must be interpreted liberally and the exceptions narrowly in order to effectuate a general policy favoring disclosure.

Accident Reports

A person involved in a motor vehicle accident must submit an accident report to the State Patrol if the accident involved injury, death, or property damage over a certain amount. The State Patrol is required to file, tabulate, and analyze all accident reports and publish statistical information based on the accident reports showing the number, location, frequency, and circumstances of accidents and other statistical information that may be of assistance in determining the cause of vehicular accidents.

The State Patrol must make the accident reports and analysis thereof available to the Department of Licensing, the Department of Transportation, the Utilities and Transportation Commission, the Traffic Safety Commission, and other public entities for further tabulation and analysis; for pertinent data relating to the regulation of highway traffic, highway construction, vehicle operators, and all other purposes; and to publish information as may be deemed of publication value.

Accident reports are confidential and may not be disclosed except to appropriate public agencies and persons who have a "proper interest" in the reports. Persons with a proper interest in the reports include the driver or drivers involved in the accident, the parent of a minor driver, any person injured in the accident, and the owner of vehicles or property damaged in the accident.

Federal Highway Safety Funds

In order to apply for federal highway safety funds, public agencies are required to compile and collect data on traffic safety, including accident reports. Federal law exempts documents created or collected for purposes of applying for federal highway safety funds from discovery or admissibility in court, 23 U.S.C. § 409.

Guillen v. Pierce County

In 2003, the United States Supreme Court ruled that the exemption in 23 U.S.C. § 409 protects traffic safety documents created or collected by an agency applying for federal highway safety funds. Guillen v. Pierce County, 537 U.S. 129 (2003). The decision overruled a decision by the Washington State Supreme Court that held that only documents created by an agency applying for federal funds are protected. According to the United States Supreme Court, the documents are only protected when they are held by the agency that is applying for the funds. In other words, the documents would be subject to discovery and admissible in court if they are held by an agency that created or collected the documents for a purpose other than applying for federal funds.

Summary of Substitute Bill:

It is stated that the Legislature intends to clarify that the public must have access under the PDA to accident reports and information compiled or collected by the State Patrol. The State Patrol must make accident reports and information and any statistical analysis thereof available to the public under the PDA. Accident reports that are filed, tabulated, and analyzed

by the State Patrol are exempt from the provisions of law that would otherwise make the reports confidential.

Substitute Bill Compared to Original Bill:

The substitute removes intent language that stated that the Legislature intended to codify the holding in Guillen. The substitute removes the requirement that the State Patrol compile and collect accident reports. The substitute removes the prohibition in the original bill against the State Patrol transferring its duties to another agency. The substitute bill exempts the accident reports filed, tabulated, and analyzed by the State Patrol from the statute that would otherwise make them confidential.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (In support) Accident reports should be available to the public. This bill makes it clear that the public has access to the accident reports when they are held by the State Patrol and is not in conflict with the federal law. This bill restores balance and is consistent with the state's philosophy of open government. The government should be held accountable for its mistakes. A citizen should not have to give up the right to sue over defective highways in exchange for a public document. Federal law does not require a citizen to swear an oath of fealty before getting this information.

(With concerns) If the State Patrol must maintain its own system for filing, tabulating, and analyzing accident reports, the bill will have a significant fiscal impact.

Testimony Against: The intent language stating that the Legislature intends to codify Guillen may be constitutionally suspect. When Congress passed the law at issue in Guillen, it was trying to encourage states to collect data by ensuring that the data could not be used against the states. This bill does not encapsulate the privilege articulated federal statute and in Guillen. There is no need to codify what is already the law under federal statute. This legislation would invalidate a memorandum of understanding between the Department of Transportation and the State Patrol. The Department of Transportation's existing disclosure policy strikes a balance between the citizens' right to know and the federal privilege. Most requests for collision data are currently being fulfilled. This bill is attempting to circumvent federal law.

Persons Testifying: (In support) Representative Williams, prime sponsor; Steve Bulzoni, Washington State Trial Lawyers Association; and Rowland Thompson, Allied Daily Newspapers of Washington.

(With concerns) Larry Shannon, Washington State Trial Lawyers Association; and Fred Fakkema, Washington State Patrol.

(Opposed) Rene Tomissen, Office of the Attorney General; and Roger E. Horton, Washington State Department of Transportation.

Persons Signed In To Testify But Not Testifying: None.